

## THE PROCESS

- The Exceptional Student Services Division of the Arizona Department of Education (ADE/ESS) is responsible for facilitating and tracking due process hearing requests. Under the Individuals with Disabilities Education Act Amendments of 1997 (IDEA '97), and its implementing regulations, an impartial due process hearing may be initiated by the parent or public education agency regarding the identification, evaluation, educational placement of a child, or the provision of a Free Appropriate Public Education (FAPE) to the child [20 USC 1415 (f) and 34 CFR 300.507 (a)(1-2)].

### Level I Hearing...

- Parent or public education agency representative notifies, in writing, the other party of their due process request.
- The public education agency notifies ADE/ESS immediately by sending a copy of the request to ADE/ESS.
- ADE/ESS selects a list of three qualified Impartial Due Process Hearing Officers, using a random selection process, and sends their resumes to both parties after screening for availability and possible bias.
- During the Impartial Due Process Hearing Officer selection process, if:
  - each party strikes a separate individual from the list of three prospective Impartial Due Process Hearing Officers, then the ADE/ESS shall name the remaining individual to preside over the Impartial Due Process Hearing;
  - each party makes an identical strike from the list of three prospective Impartial Due Process Hearing Officers, then the ADE/ESS shall select from the two remaining Impartial Due Process Hearing Officers, through a random selection process, the individual that shall preside over the Impartial Due Process Hearing;
  - one or both parties decide not to strike from the list of three prospective Impartial Due Process Hearing Officers, without cause, then the ADE/ESS shall select an Impartial Due Process Hearing Officer from the remaining individuals using a random selection process; or
  - both parties agree on whom they want for the Impartial Due Process Hearing Officer (from the list of 3 names provided), then documentation to that effect from each party must be received by the ADE/ESS within seven calendar days from the time each party received the three resumes. Then, the ADE/ESS shall assign that individual as the Impartial Due Process Hearing Officer.

- either party decides to object for cause to the selection of a specific individual to serve as the Impartial Due Process Hearing Officer, the reasons must be in writing and submitted to the ADE/ESS. The objection and evidence used will be shared with the opposing party. Then the ADE/ESS reviews the evidence submitted and determines whether the person will serve as the Impartial Due Process Hearing Officer.

- Once the Impartial Due Process Hearing Officer has been selected, it becomes his or her responsibility to confirm, in writing, his or her retention with both parties and their attorneys, when appropriate. The purpose of the confirmation letter is to introduce the Impartial Due Process Hearing Officer to the parties and to schedule a pre-hearing conference, where, among other things, mediation may still be considered as a viable course of action, to clarify issues, expectations, and to discuss a date for the hearing.
- Evidence and witness lists are exchanged between the parties and the Impartial Due Process Hearing Officer.
- The hearing is held with both parties having the opportunity to question each other's witnesses.
- Once all the witnesses are heard and evidence presented, the Impartial Due Process Hearing Officer adjourns the hearing to consider the evidence and render a decision.
- The Impartial Due Process Hearing Officer sends the written decision to both parties within 45 calendar days of the public education agency receiving the original request for due process or within the extended time line conveyed to both parties by the Impartial Due Process Hearing Officer.

## THE APPEAL PROCESS

### Level II Hearing or an Appeal...

- Either party may submit a written request for an Administrative Review to the ADE/ESS within 35 calendar days of either party's receipt of the First-Level Due Process Hearing Officer's decision. The ADE/ESS will forward the request to the Arizona Office of Administrative Hearings (OAH). After a request for an Administrative Review has been submitted, any additional information or requests must be sent directly to the Administrative Law Judge (ALJ), once the parties have received the assignment notification. As a

courtesy, any additional information or requests sent to the ALJ should also be sent to the other party involved in the Administrative Review proceedings.

- The ALJ must reach a decision and deliver a copy of their findings (written or electronic) to each party within 30 calendar days after receiving the request for an Administrative Review.

### Appeal to Court...

- If either party disagrees with the decision rendered by the ALJ, either party may file a judicial review within 35 calendar days in State Court.
- If the parents hired an attorney to represent them in the Level I and II Hearings and prevailed in part or on all of the issues, they may request attorney fees for that portion of the case in which they prevailed by filing in an appropriate State or Federal Court.

## THE IMPARTIAL DUE PROCESS HEARING OFFICER

- During the Pre-Hearing Conference, the Impartial Due Process Hearing Officer will make the decision as to whether or not the request received is a legitimate due process complaint.
- The Impartial Due Process Hearing Officer may bar any party, which fails to disclose all evaluations completed and recommendations to the other party at least 5 business days prior to the hearing, from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.
- The Impartial Due Process Hearing Officer conducts the hearing and insures that proper procedures are followed and the rights of parties are protected.
- An Impartial Due Process Hearing Officer shall be:
  - **Unbiased** – not prejudiced for or against any party in the hearing;
  - **Disinterested** – not having any personal or professional interest that would conflict with objectivity in the hearing;
  - **Independent** – may not be an officer, employee or agent of a public education agency involved in the education or care of the child, or ADE [a person who otherwise qualifies to conduct a hearing is not an employee of the public education agency or the

ADE/ESS solely because the person is paid by the public education agency to serve as an Impartial Due Process Hearing Officer]; and

- **Trained and evaluated** by the ADE/ESS as to the state and federal laws pertaining to the identification, evaluation, placement of and the provision of FAPE for children with disabilities.

Impartial Due Process Hearing Officer qualifications and training must include:

- **Participation in all required training and evaluation** conducted by the ADE/ESS as to the state and federal laws pertaining to the identification, evaluation, placement of and the provision of FAPE for children with disabilities;
- **Demonstration of competency** by achieving a minimum score of 80% on a criterion-referenced test selected by the ADE/ESS;
- **An Impartial Due Process Hearing Officer shall be an attorney** licensed to practice law in the United States or an attorney on inactive status whose withdrawal from active practice is not premised upon adverse disciplinary action from any state or federal bar association. This individual must have two years experience as a licensed, practicing attorney, including experience in special education related matters as an Impartial Due Process Hearing Officer or practicing attorney; and
- **An Impartial Due Process Hearing Officer shall not have represented** a parent or a public education agency in a special education matter during the preceding calendar year.

## ATTORNEY FEES

- Attorney fees may only be awarded by the appropriate State or Federal Court, not by the Impartial Due Process Hearing Officer or the ALJ.
  - Parents may seek the reimbursement of attorney fees from the court if they are the prevailing party in a particular hearing.
  - Attorney fees may be awarded if the court finds that the school or agency unnecessarily drew out the final resolution of the action or proceedings, or if there was a violation of this section.
  - Attorney fees may be denied by the court for Individualized Education Program (IEP) meetings, unless the meeting was ordered by a hearing officer or court, for mediation
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conducted prior to filing the request for due process, or if the relief finally obtained by the parents is not more favorable than an offer for settlement made more than 10 days before the proceedings began.

- Attorney fees may be reduced by the court if the process is unreasonably drawn out, if the attorney fees exceed prevailing hourly rates, if the attorney and legal services furnished were excessive, or if the attorney failed to provide appropriate information to the school or district.

## THE PARTIES

- Either party may request a due process hearing concerning any special education issue that involves identification, evaluation, placement, and/or the provision of a free appropriate public education (FAPE).
- Either party has the right to present their evidence and confront, cross examine, and compel the attendance of witnesses;
- At least 5 business days prior to the hearing, each party shall disclose to all other parties all evaluations completed by that date and recommendations based on the offering party's evaluations that the party intends to use at the hearing; and
- Either party has the right to produce outside expert witnesses, and be represented by legal counsel and by individuals with special knowledge or training with respect to problems of children with disabilities.
- Parents should expect their child to remain in the last agreed upon placement prior to filing for due process, unless they are placed in an interim alternative educational setting as the result of certain dangerous behavior or those associated with drugs or weapons.
- Parents have a right to a written or, the option of, an electronic verbatim record of the hearing, findings of fact, and decisions.
- Parents or their attorney who request a due process hearing must include the name of the child, address of the residence of the child, name of the school the child is attending, a description of the nature of the problem, the facts, and the proposed resolution.
- Parents may request an **Expedited Due Process Hearing** if they disagree with a manifestation determination or with any decision regarding a change of

placement as a result of a disciplinary action.

**ARIZONA  
DEPARTMENT  
OF  
EDUCATION**

**EXCEPTIONAL  
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**DUE  
PROCESS  
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*If you have any questions call:  
(602) 542-3084*